

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VICTOR DAVID CARRASQUILLO,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	No. 14-6206
	:	
JOHN WETZEL, <u>et al.</u>,	:	
Respondents.	:	
	:	

ORDER

AND NOW, this 20th day of July, 2015, upon careful and independent consideration of the Petition for a Writ of Habeas Corpus (Doc. No. 1), the response and reply thereto, and after review of the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa, it is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED and ADOPTED**.¹
2. The petition for a Writ of Habeas Corpus is **DISMISSED with prejudice**.
3. There is no probable cause to issue a certificate of appealability.
4. The Clerk of Court shall mark this case **CLOSED** for statistical purposes.

¹ While no objections have been filed to the Report and Recommendation, I note that “Petitioner’s Reply (‘Traverse’) to Respondent’s Answer to Petition for Writ of Habeas Corpus” was docketed after the Report and Recommendation was issued. I have reviewed Petitioner’s reply and find that it does not provide any analysis or argument on the issue of timeliness of his PCRA petition that was not before Judge Caracappa in his initial petition. I agree with the Report and Recommendation’s conclusions regarding the untimeliness of the PCRA petition and the lack of basis for equitable tolling. To supplement Judge Caracappa’s analysis on this point, while Petitioner cites to cases that indicate attorney misfeasance may allow for equitable tolling, the United States Court of Appeals for the Third Circuit also requires a showing of reasonable diligence on the part of Petitioner. Schlueter v. Varner, 384 F.3d 69, 77-78 (3d Cir. 2004). As in Schlueter, “[w]e are convinced that that if [Petitioner] had exercised reasonable diligence, he could have brought his claims in a timely fashion,” notwithstanding PCRA counsel’s alleged misconduct. Therefore, the Report and Recommendation is approved and adopted.

BY THE COURT:

/s/ Mitchell S. Goldberg

Mitchell S. Goldberg, J.